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DATE: April 8, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: CS/HB 699
RELATING TO: Rural Electric Cooperatives
SPONSOR(S): Committee on Utilities and Telecommunications and Representative(s) Goodlette
TIED BILL(S): None.

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) UTILITIES AND TELECOMMUNICATIONS (RIC) YEAS 14 NAYS 0
 - (2) JUDICIAL OVERSIGHT
 - (3) COUNCIL FOR READY INFRASTRUCTURE
 - (4)
 - (5)
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I. SUMMARY:

Chapter 425, Florida Statutes, governs rural electric cooperatives. Section 425.02, Florida Statutes, allows "cooperative, nonprofit, membership corporations" to be organized to supply electric energy and promote and extend electric use in rural areas.

CS/HB 699 allows members of a cooperative to vote by mail or limited proxy on any matter before the cooperative, if the bylaws permit voting by mail or proxy. The matter under consideration must be specifically identified on the mail ballot or limited proxy for the vote or proxy to be counted.

The bill prohibits general proxies and provides that the limited proxy is only valid for 90 days from the first meeting it was granted. It is revocable at any time and the cooperatives bylaws are allowed to specify the number of members that can be voted by proxy.

It provides specific proxy requirements that are very similar to the proxy requirements found in section 607.0722, F.S.

This bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect October 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Chapter 425, Florida Statutes, governs rural electric cooperatives. Section 425.02, Florida Statutes, allow "cooperative, nonprofit, membership corporations" to be organized to supply electric energy and promote and extend electric use in rural areas. These corporations are referred to as "cooperatives" under the law. See s. 425.02, F.S. A "rural area" pursuant to section 425.03, Florida Statutes, means, "any area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough having a population in excess of 2,500 persons."

In addition to other corporate powers, section 425.04, Florida Statutes, allows cooperatives to:

generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10 percent of the number of its members; to process, treat, sell, and dispose of water and water rights; to purchase, construct, own and operate water systems; to own and operate sanitary sewer systems; and to supply water and sanitary sewer services. However, no cooperative shall distribute or sell any electricity, or electric energy to any person residing within any town, city or area which person is receiving adequate central station service or who at the time of commencing such service, or offer to serve, by a cooperative, is receiving adequate central station service from any utility agency, privately or municipally owned individual partnership or corporation;

Section 425.045, Florida Statutes, provides that all meetings of the trustees of the cooperative or the board of any affiliated company or subsidiary at which official acts are to be taken are meetings open to the membership at all times. No formal action is considered binding unless it is taken at an open meeting. This section also requires minutes of the meetings and reasonable notice of the meetings.

Members of a cooperative must agree, pursuant to section 425.09, Florida Statutes, to "use electric energy furnished by the cooperative when such electric energy is available through its facilities." The bylaws of the cooperative may provide that any person shall cease to be a member if that person refuses to use the electric energy supplied by the cooperative or if the electric energy is not made available to the person within a specified time after that person becomes a member.

An annual meeting is to be held at a time provided in the bylaws. A special meeting of the members may be called by the board of trustees or by any three trustees, by 10 percent or more of the members or by the president of the cooperative. See ss. 425.09(2), (3), F.S.

Section 425.09(6), Florida Statutes, provides that one percent of the members present in person shall constitute a quorum for the transaction of business at all meetings of the members. The bylaws may prescribe the presence of a greater percentage of the members for a quorum. For the election of the trustees, however, the bylaws may permit voting by proxy or by mail and the members so voting shall be counted for the determination of a quorum. According to the Florida Electric Cooperatives Association many cooperatives have hundreds of members and it is difficult for some cooperatives to accommodate all the members who wish to vote on issues at meetings other than meetings for the election of the trustees.

Each member is entitled to one vote on each matter submitted to a vote at a meeting pursuant to section 425.09(7), Florida Statutes. Voting is required to be in person. A person may only vote by proxy for no more than three members.

The trustees are charged with the management of the affairs and business of the cooperative and the board of trustees shall not be less than five members pursuant to section 425.10, Florida Statutes.

Section 607.0722, Florida Statutes, provides for proxies for voting on behalf of a shareholder of a corporation. It provides for the manner of voting by proxy for shareholders of a corporation. Under this section a shareholder may appoint a proxy to vote by

signing an appointment form, either personally or by the shareholder's attorney in fact. An executed telegram or cablegram appearing to have been transmitted by such person, or a photographic, photostatic, or equivalent reproduction of an appointment form, is a sufficient appointment form.

This section also provides for the effectiveness of the proxy and other provisions relating to authority, revocation, transfers, and limitations.

C. EFFECT OF PROPOSED CHANGES:

The bill would allow members of a cooperative to vote by mail or limited proxy on any matter before the cooperative, if the bylaws permit voting by mail or proxy. A majority of a quorum is required to approve any motion or matter before a meeting of the members. A matter raised at a meeting must be specifically identified on the mail ballot or limited proxy for the vote or proxy to be counted.

It allows the bylaws of the cooperative to provide for voting by limited proxy in addition to voting by mail. It prohibits the bylaws from permitting voting by general proxy. A limited proxy is defined by the bill as one "on which a member has recorded a vote for or against an issue or issues specifically listed on the proxy." The proxy is only valid for 90 days after the date of the first meeting for which the proxy was given. The bill also provides that a proxy is revocable at any time by the member. It also allows the bylaws of the cooperative to provide for the number of members a person voting by proxy may vote for at any meeting of the members.

The bill provides specific provisions regarding the use of a limited proxy. The provisions are similar to the proxy provisions in section 607.0722, Florida Statutes, relating to shareholder proxies. A member of a cooperative may appoint a limited proxy to vote or otherwise act for the member by signing an appointment form, either personally or by the member's attorney in fact. An executed

telegram or cablegram appearing to have been transmitted by the member. A photographic, photostatic, or equivalent reproduction of the appointment form is also sufficient.

The member may grant the authority to act on the member's behalf by signing an appointment form, or having the appointment form signed by the member's authorized officer, director, employee, or agent by any reasonable means which may include a facsimile. The member may also transmit or authorize the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the proxy or to a proxy solicitation firm, proxy support service organization, registrar, or agent, authorized by the person who will be the proxy, to receive the transmission. The electronic transmission must set forth or include information that shows the transmission was authorized by the member. If the transmission is determined to be valid the person making such determination is required to specify the information that was relied upon in making the determination.

D. SECTION-BY-SECTION ANALYSIS:

Please see Present Situation and Effect of Proposed Changes sections.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Utilities and Telecommunications adopted an amendment and made the bill a committee substitute. The committee substitute provides a new subsection (8) to specifically add provisions regarding the appointment of a limited proxy. This language is very similar to the proxy language found in section 607.0722, Florida Statutes, concerning shareholder proxies.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND TELECOMMUNICATIONS:

Prepared by:

Staff Director:

Patrick L. "Booter" Imhof

Patrick L. "Booter" Imhof

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

L. Michael Billmeier

Lynne Overton